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No. _____

In The
Supreme Court Of The United States

OCTOBER TERM, 1988

LIBERTY MOBILEHOME SALES, INC.,
Appellant,

v.

STEPHEN EAMIELLO, *et ux.*,
Appellees.

ON APPEAL FROM THE
SUPREME COURT OF CONNECTICUT

BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM

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Pursuant to Rule 16.5, the appellant, Liberty Mobilehome Sales, Inc., opposes the motion to dismiss or affirm filed by the appellees, Stephen Eamiello, et ux.

ARGUMENT

A. The Appeal Was Timely Filed and the Court Does Have Jurisdiction

The judgment below was entered on August 16, 1988 by the Connecticut Supreme Court, and the appeal to this Court was timely filed.

Within ninety days, on November 14, 1988, the Jurisdictional Statement and Appendix were filed in the Supreme Court of the United States, and three copies were mailed first class, postage prepaid, to Edward G. Fitzpatrick, Esq., and Robert M. Langer, Assistant Attorney General.

On November 14, 1988, the Notice

of Appeal was filed in Hartford Superior Court. Although the caption read "In the Supreme Court of the State of Connecticut," and the appellant's messenger was directed to deliver the Notice to the Connecticut Supreme Court, he inadvertently delivered the Notice to the Superior Court where it was time-stamped for November 14, 1988. (Said date is stamped on the bottom of the "Notice.") When the Superior Court clerk realized the Notice was filed in the wrong court, he transferred it to the Connecticut Supreme Court. The Notice reached that court on November 17, 1988.

The appellees had actual notice of the appeal on November 14, 1988, when they received the jurisdictional statement, the appendix, and a copy of the Notice.

Even if the Notice was not

considered to be filed until November 17, 1988, it would not be a jurisdictional defect, Heflin v. United States, 357 U.S. 415 (1959), and the court could exercise discretion to consider the case. Taglianetti v. United States, 394 U.S. 316 (1969).

In Parker v. Levy, 417 U.S. 740 (1974), the appellee claimed that the asserted defects in appellants' filing of their notice of appeal should be treated as a failure to file a timely notice of appeal, and the appeal must be dismissed. Id. at 743, citing, Territo v. United States, 358 U.S. 279 (1959). The Court noted that the appellee made no claim that he did not have actual notice of the filing of the notice of appeal. The court stated that technical noncompliance does not deprive this Court of jurisdiction, and refused to dismiss the appeal on such

grounds. Parker, 417 U.S. at 743, citing, Taglianetti, 394 U.S. at 316; Heflin, 358 U.S. at 1100.

The appellees in this case certainly had timely notice of the appeal and actual notice of the filing of the notice of appeal. Therefore, this court has jurisdiction to consider the case on the merits.

B. The Appeal Presents A Substantial Federal Question

1. The Decision Below Conflicts With this Court's Decision in Loretto v. Teleprompter Manhattan CATV.

The appellees claim that Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982) stands for the proposition that landlord-tenant legislation can never effect a taking, and therefore Loretto has no application to the case at bar. The Loretto Court did indeed state that "[t]his Court has

consistently affirmed that States have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails," 458 U.S. at 440. This court's affirmation of the states' power to regulate the landlord-tenant relationship, however, has never been extended to sanction the uncompensated transfer to a tenant of a perpetual tenancy, which the tenant may sell to the highest bidder.

Although appellees concede that the Mobile Home Act authorizes a physical invasion of the park owner's property, they contend that the Takings Clause affords no protection where the invader was initially invited onto the property. See Appellees' Motion to Dismiss, pp. 6-7; contra, appellant's Jurisdictional

Statement, pp. 30-35. The question of whether the park owner can exercise any control over the timing, extent and nature of the initial invasion is moot, because mobile home lots are so rarely available, and because the appellees received a statutory permanent leasehold interest only after they took possession of their Lot. The appellees entered into a one year lease with Liberty on August 29, 1980, before the enactment of Public Act 81-322, which amended Conn. Gen. Stat. §21-80 by abolishing lapse of time as a ground for eviction of a park "resident."[1]

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[1] The Connecticut Supreme Court ruled in Thompson v. Merlino Enterprises, Inc., 208 Conn. 656 (1988) that the administrator of an estate qualifies as a "resident" of a mobile home park under the Mobile Home Act, in addition to upholding the Act's constitutionality in the face of a

Prior to passage of the 1981 amendment each tenant negotiated a lease of limited duration with the park owner. These tenants enjoyed the right, assured by the 1974 amendment to the Mobile Home Act, (Public Act 74-333 codified as C.G.S. §21-79), to sell their mobile homes on their lots to purchasers who had to be accepted as new tenants so long as the buyers could pay the rent, the home was in acceptable condition and the tenants obeyed the law and the park rules. Tenants could still be evicted for lapse

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taking challenge similar to the one before this Court in Eamiello. Thus, when the tenant dies, the park owner still cannot recover possession of his lot. The constitutional question in Thompson has also recently been considered by this Court on appeal. This Court dismissed the appeal in Merlino Enterprises, Inc. v. Thompson, 55 U.S.L.W. 9999 (U.S. Jan. 17, 1988), appeal dismissed.

of time and hence could only sell, along with the mobile home, the right to a lease of limited duration. When it passed the 1981 amendment eliminating evictions for lapse of time, however, the Legislature transferred a perpetual leasehold right to existing mobile home tenants like the appellees, who were then free to sell thatright to the highest bidder. Yet Liberty had agreed to rent a lot to the appellees for one year only. By forcing Liberty to accept the appellees and their successors as tenants <u>forever</u>, when Liberty and the appellees only bargained for a one year lease, the Mobile Home Act unambiguously crosses the line from economic regulation to an authorization of a permanent physical occupation constituting a per se taking. The Mobile Home Act thereby transformed the appellees into "interloper[s] with a government

license." F.C.C. v. Florida Power Corp., 480 U.S. 245 (1987)

Appellees would also misapply this Court's decision in Florida Power Corp. by attempting to draw parallels between that case and the instant case. Florida Power Corp. dealt with the legitimate economic regulation of the landlord-tenant relationship, specifically, control over the rents charged to cable television companies for the right to use a utility company's lines. Florida Power Corp. merely followed a long line of cases upholding rent control. The statute before the Court in Florida Power Corp. did not provide cable companies with permanent leaseholds, nor the right to sell such leaseholds on the open market.

Appellees attempt to distinguish this case from Loretto by claiming that

Liberty may sell its land subject to the permanent leases and still receive full value. Motion to Dismiss, p. 8. Appellees overlook the fact that they, rather than Liberty, will receive the value of the permanent leasehold if they sell their mobile home on its lot as permitted by the present law. The value Liberty could receive for the park is directly diminished by the uncompensated transfer of a marketable permanent leasehold interest to the appellees.

2. The Decision Below Conflicts With Hall v. City of Santa Barbara.

Appellees also attempt to distinguish Hall v. City of Santa Barbara, 833 F.2d 1270 (9th Cir. 1987), reh denied, 833 F.2d 1282 (9th Cir. 1987), cert denied, , U.S. , 108 S.Ct. 1120, (1988), from this case by claiming that the existence of a rent control

statute in addition to laws granting mobile home tenants the right to sell their perpetual leasehold was pivotal to the Ninth Circuit's decision. The court below did not try to distinguish Hall in this manner, and for good reason. The Hall court found that the Santa Barbara statutory scheme, as it allegedly operated, worked a taking by physical occupation "by giving landlord and tenant complementary estates in the same land." 833 F.2d at 1279. What was "crucial" to Hall was not the existence of rent control, but rather the transfer to the tenant of the right to sell his permanent tenancy. The Santa Barbara statute perhaps worked a more egregious taking by transferring the marketable right to permanent occupancy at a reduced rent. Nevertheless, the additional marketable value of rent-control transferred to the

Santa Barbara tenants only bears on the question of the amount of compensation due the park owner for the physical occupation taking, not on whether a taking has occurred.

Appellees further argue that the Mobile Home Act, unlike the Santa Barbara statutory scheme, merely ensures that the landlord will not appropriate the tenant's investment in his mobile home. Appellees claim that the value of the permanent leasehold -- which they never contracted for with Liberty at the time they purchased their mobile home in 1980 -- represents part of their "investment." The problem with the appellees' argument is that they never paid Liberty for the right to occupy their site permanently. Nevertheless, they still seek the windfall available to them under the Mobile Home Act.

3. The Decision Below Conflicts With This Court's Decision in Nollan v. California Coastal Comm'n.

Appellees also incorrectly characterize Liberty's challenge to the Mobile Home Act under the traditional taking standard, "that land use regulation does not effect a taking if it 'substantially advance[s] legitimate state interests . . .'" Nollan v. California Coastal Comm'n, U.S. , 107 S.Ct. 3141, 3146 (1987), quoting Agins v. Tiburon, 447 U.S. 255, (1980). Liberty argues not only that the Mobile Home Act has no legitimate public purpose, but that in the alternative, the law fails to further its ostensible end.

The court below found that protecting the economic interest of the tenant is a substantial public purpose, and the Connecticut legislature could

constitutionally transfer saleable permanent tenancies to park tenants because they "generally are more in need." Liberty Mobilehome Sales, Inc. v. Eamiello, 208 Conn. at 648-649, 546 A.2d 805 (1988). However, the Takings Clause of the United States Constitution only sanctions land-use regulation where there is "a cause-and-effect relationship between the property use restricted by the regulation and the social evil that the regulation seeks to remedy. Since the owner's use of the property is (or, but for the regulation, would be) the source of the social problem, it can not be said that he has been singled out unfairly." Pennell v. City of San Jose, U.S. , 108 S.Ct. 849, 862 (1988) (Justice Scalia dissenting). Liberty certainly should not bear the responsibility for the fact that the

appellees may have been the poorer of the two parties. The relative poverty of the appellees simply does not justify the transfer from Liberty to them of the marketable right to a perpetual tenancy. Although the legislature arguably could have constitutionally protected the appellees' investment in their home made before the legislature gave them the right to permanent occupancy in 1981, (in other words, the $12,500 1980 purchase price), the grant of that right gave the appellees a windfall at Liberty's expense wholly unrelated to any social evil allegedly caused by Liberty.

Liberty also argues that, in the alternative, the Mobile Home Act fails to advance substantially its stated purpose of protecting the investment of tenants. The statute is so overly broad as to be unconstitutional, because it reaches well

beyond the protection of the appellees' initial investment of $12,500 by granting them the uncompensated windfall right to capture the additional value of the permanent tenancy.

CONCLUSION

For the reasons stated above and in the jurisdictional statement, the appellant respectfully requests that this Court accept jurisdiction of this appeal.

APPELLANT

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